

# HEALTH SERVICES AND DEVELOPMENT AGENCY

## MINUTES

MARCH 22, 2006

### **AGENCY MEMBERS PRESENT**

Caldwell, Gene, M.D., Chair  
Atchley, Bryan, Vice Chair  
Collier, David, M.D., designee for the TennCare Director  
Flowers, Paula, Commissioner of Commerce and Insurance  
Handorf, Charles, M.D.  
Koella, Carl, III,  
Lammert, Gregory  
Weaver, Faye, designee for the Comptroller of the Treasury

### **AGENCY MEMBERS ABSENT**

Jones, Clark  
Troy, Peggy

### **COURT REPORTER**

Kathy Wilson

### **AGENCY STAFF PRESENT**

Hill, Melanie, Executive Director  
Bobbitt, Melissa, Administrative Services Assistant II  
Brogden, Reid, General Counsel  
Christoffersen, Jim, Deputy General Counsel  
Farber, Mark, Assistant Executive Director  
Finchum, Rhonda, Office Manager  
Wells, Phil, Health Planner III

### **GUESTS PRESENT**

Arriola, John  
Baker, E. Graham, Esq., Weeks, Anderson, & Baker  
Bell, Karen, Director, Elk Valley Health  
Brown, Dere, NHC  
Bush, Carolyn, Home Health Care of East Tennessee  
Cape, Richard, Cape Surgery Center  
Cape, Stephanie, Cape Surgery Center  
Chadwill, Liz, Home Health Care of East Tennessee  
Coates, Robyn, Memorial Health Care Systems  
Corritore, Danell, Department of Health  
Cravens, Tom, Esq., Kramer, Rayson, Leake, Rodgers & Morgan  
Cuddy, Stephen, MD, Dyersburg Regional Medical Center  
Culp, Joe, Department of Health  
Delph, Benjamin, Bass, Berry & Sims  
Duncan, Bruce K., Assistant Vice President, NHC  
Elrod, Dan H., Esq., Miller & Martin  
Evans, Ray, Consultant, Home Health Care Middle Tennessee  
Fesmire, Tiffany, Administrator, Volunteer Home Care of West Tennessee  
Foss, Coleman, CEO, Dyersburg Regional Medical Center

HEALTH SERVICES AND DEVELOPMENT AGENCY

MARCH 22, 2006 MEETING

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Foster, Joe, Assertive Medical, Inc.  
Gadd, Mary M., Administrator/Owner, Guardian Home Care, LLC  
Geldersoma, Gerald  
Gregory, Holly, Guardian Home Care  
Hackett, John, CFO, Volunteer Home Care of West Tennessee, Inc.  
Henslay, Najie, Volunteer Home Care of West Tennessee, Inc.  
Hinson, Michael, ASR, Tennessee Quality Hospice  
Johnson, J., Nashville Orotho Services  
Johnson, Sonia, Home Health Care of East Tennessee  
Johnson, Vicky, Home Health Care of Middle Tennessee  
Jones, Melinda, Guardian Home Care  
Judgens, Sherry, Nashville Orotho Services  
Kioshas, JM, Nashville Orotho Services  
Kircher, Rosemary, Reg. Clinical Administrator, Caris Healthcare  
Lodge, Richard, Esq., Bass, Berry & Sims  
Lucchesi, Jane, Memorial Health Care Systems  
Mallard, Teusio, Home Health Care of Middle Tennessee  
McDearman, Scott, Esq., Grant, Konvalinka & Harrison, PC  
McRae, Norman, President, Caris Healthcare  
Norris, Mark, Esq., Armstrong, Allen, PLLC  
Penny, William, Esq., Stites & Harbison  
Phillips, Brant, Bass, Berry & Sims  
Pleasant, Bonnie, Nurse One  
Porter, Anita, Administrator, Quality First Home Care  
Puri, Chris, Esq., Boulton, Cummings, Connors & Berry  
Ray, Kin, Assertive Medical, Inc.  
Ray, Rose, Assertive Medical, Inc.  
Roberts, Donna, Stites & Harbison  
Rudd Owens, Pamela, Director of Clinical Services, NHC Home Care  
Russell, Richard, THCA  
Saxena, Rishi K., MD  
Stephenson, Kate, Esq., Trauger & Ney  
Strong, Cynthia, Business Development, Quality Home Health  
Suggs, Richard, Volunteer Home Care  
Sutherland, Devon, Assertive Medical, Inc.  
Taylor-Huff, Dixie, Owner, White House Skilled Housing  
Turner, Abigail, Bass, Berry & Sims  
Webb, Jimmie, RN, Medical Home Health  
Wells, Billie  
Wells, Christine, Nurse One  
West, Sharon, Assertive Medical, Inc.  
West, William H., Esq., Baker, Donelson, Bearman, Caldwell & Berkowitz  
White, Judy, White House Community Care  
Wright, Will, Esq., Stites & Harbison

**Chairman Caldwell called the meeting to order at 8:30 a.m. in Room 160, First Floor Conference Room of the Davy Crockett Tower, Nashville, Tennessee.**

#### **DIRECTOR'S ANNOUNCEMENTS**

Melanie Hill, Executive Director, made general announcements.

#### **CERTIFICATE OF NEED APPLICATIONS**

*Mark Farber summarized the following CON applications:*

*Dr. Handorf recused.*

**Dyersburg Regional Medical Center - (Dyersburg, Dyer County) - Project No. CN0509-083**

The establishment of a cardiac catheterization laboratory to provide cardiac diagnostic services in newly renovated space at the hospital. Project Cost \$2,972,453.00.

Mark Norris, Esq., representing the applicant, addressed the Agency. Coleman Foss, CEO and Stephen Cuddy, M.D., spoke on behalf of the project.

Dan H. Elrod Esq., representing, Jackson-Madison County General Hospital withdrew opposition with the applicant agreeing to limitations being placed upon the Certificate of Need.

Ms. Weaver moved for approval of the project to establish a diagnostic cardiac catheterization laboratory to provide cardiac diagnostic services at the hospital based on: 1) Need – The need is there based on the number of referrals they make for such procedures from other hospitals; 2) Economic Feasibility – The project is financially feasible; and 3) The project does contribute to the orderly development of adequate and effective health care. **CONDITION: 1) Cardiac catheterization procedures would be limited to diagnostic only and interventional procedures would not be provided; and (2) patients receiving cardiac catheterization be limited to those who qualify for the procedure in settings without cardiac surgery.** Mr. Atchley seconded the motion. The motion FAILED [3-4-0]. **Denied**

AYE: Atchley, Weaver, Collier

NAY: Flowers, Lammert, Koella, Caldwell

Dr. Caldwell spoke for the prevailing vote and stated that there is not a need because of the distribution patterns of the patients in the nearby community flows away from Dyersburg and toward Jackson. The service has been available in the area for seven (7) years and is still not getting above 300 procedures. Two (2) of the counties are neighbors to the county that does the most cardiac cath in the community. There is no cardiac catheterization physician on the staff at the present time. There is not a future need.

*\* Reconsideration Request presented after Rishi Saxena, MDPC – CN0512-109*

*Mr. Lammert recused*

**Caris Healthcare - (Nashville, Davidson County) - Project No. CN0511-103**

The relocation of the parent office from 701 West 7th Street, Suite C, Columbia (Maury County), TN to The Oaks Complex at 1101 Kermit Drive, Suite 501, Nashville (Davidson County), TN. The service area includes: Bedford, Cheatham, Davidson, Dickson, Franklin, Giles, Hardin, Hickman, Houston, Humphreys, Lawrence, Lewis, Lincoln, Marshall, Maury, Montgomery, Moore, Perry, Rutherford, Stewart, Wayne and Williamson counties. No change to the existing service area is proposed. Project Cost \$57,938.00.

Dan H. Elrod Esq., representing the applicant, addressed the Agency and Norman McRae, President, spoke on behalf of the project. Present in support were: Bruce K. Duncan, Assistant Vice President, NHC; and Rosemary Kircher, Clinical Administrator.

Mr. Koella moved for approval of the project based on: 1) Need – The need is there, this is just changing the county of the parent office due to reimbursement not being based on whom you serve, but on location of the parent office; 2) Economic Feasibility – The project is economically feasible with the cash reserves; and 3) The project does contribute to the orderly development of adequate and effective health care with the licensing procedure and the provision of TennCare services. Commissioner Flowers seconded the motion. The motion CARRIED [7-0-0]. **APPROVED**

AYE: Flowers, Koella, Atchley, Handorf, Weaver, Collier, Caldwell

NAY: None

*Mr. Lammert recused*

**Assertive Medical, Inc. - (McMinnville, Warren County) - Project No. CN0512-108**

The establishment of a home health organization to provide a full range of home health services, including but not limited to skilled nursing and private duty nursing services. The proposed service area will include: Warren, Cannon, Coffee, Franklin, Grundy, Marion, Sequatchie, Hamilton, Van Buren, White, Cumberland, Putnam, Jackson, Smith and DeKalb counties. The parent office will be located at 597 Shelbyville Road, McMinnville (Warren County), TN 37110. Project Cost \$353,000.00.

E. Graham Baker, Jr., Esq., representing the applicant, addressed the Agency. Roger Ray and Kim Ray, Owners, spoke on behalf of the project. Seeking in support were Gerald Geldersoma and Billie Wells.

Opposing the project were: Cynthia Strong, Business Development, Quality Home Health; Ray Evans, Consultant, Home Health Care Middle Tennessee; Scott McDearman, Esq., representing CareAll Home Care Services; Pamela Rudd Owens, Director of Clinical Services, NHC Home Care; Mary M. Gadd, Administrator/Owner, Guardian Home Care, LLC; and Bell, Karen, Director, Elk Valley Health. Present in opposition were John Hackett, CFO, Volunteer Home Care of West Tennessee, Jimmy Webb, The Healthfield Group and Tiffany Fesmire, Administrator, Volunteer Home Care of West Tennessee.

Mr. Baker rebutted.

Mr. Evans provided summation for the opposition.

Mr. Baker provided summation on behalf of the applicant.

Commissioner Flowers moved for denial of CN0512-108 for the McMinnville service area based on: 1) Need – The need is not demonstrated as there is a surplus of service available to the public in this service area. The existing system has more capacity to take additional patients so there is not a need. The special needs of the service area population are being met; 2) Economic Feasibility – The applicant has not indicated that cutting out the middle man would be a more effective alternative method of providing the services; and 3) The project does not contribute to the orderly development of adequate and effective health care as there would be negative effects as this system was established under a different set of rules. There were companies that did go get their licenses to provide these services and they have adequate staff to provide services that are needed. The availability of care givers is already present and consolidation of this group of 1200 nurses would not be orderly. Ms. Weaver seconded the motion. The motion CARRIED [6-1-0]. **DENIED**

AYE: Flowers, Koella, Atchley, Weaver, Collier, Caldwell

NAY: Handorf

**Assertive Medical, Inc. - (Hohenwald, Lewis County) - Project No. CN0511-100**

The establishment of a home health organization to provide a full range of home health services, including but not limited to skilled nursing and private duty nursing services. The proposed service area will include: Lewis, Perry, Hickman, Lawrence, Maury, Marshall, Bedford, Moore, Lincoln, Giles and Wayne counties. The parent office will be located at 519 W. Main Street, Hohenwald (Lewis County), TN 38462. Project Cost \$272,700.00.

**WITHDRAWN**

**Rishi K. Saxena MDPC - (Murfreesboro, Rutherford County) - Project No. CN0512-109**

Acquisition of a computerized tomography (CT) 64 slice scanner for coronary angiography limited to patients of the physician practice. Project Cost \$2,022,513.00.

William West, Esq., representing the applicant, addressed the Agency and Rishi K. Saxena, MD spoke on behalf of the project.

Mr. Koella moved for approval of the project for Dr. Saxena for the acquisition of a 64-slice computerized tomography (CT) scanner based on: 1) Need – The need is there due to the population growth in Rutherford County as well as the number of patients Dr. Saxena will be seeing there; 2) Economic Feasibility – The project is economically feasible through cash reserves; and 3) The project does contribute to the orderly development of adequate and effective health care through the licensing and the TennCare access. Dr. Handorf seconded the motion. The motion CARRIED [8-0-0]. **APPROVED**

AYE: Flowers, Lammert, Koella, Atchley, Handorf, Weaver, Collier, Caldwell  
NAY: None

*Dr. Handorf recused.*

**\*Dyersburg Regional Medical Center - (Dyersburg, Dyer County) - Project No. CN0509-083**

Request for reconsideration of denial of project.

Mr. Koella motioned to reconsider the project at the June Meeting. Mr. Atchley seconded. The motion CARRIED [4-3-0].

AYE: Koella, Atchley, Weaver, Collier  
NAY: Flowers, Lammert, Caldwell

**White House Skilled Housing - (White House, Robertson County) - Project No. CN0511-104 and White House Health Care, Inc. - (White House, Robertson County) - Project No. CN9409-062AEE were presented simultaneously with General Counsel's Report item presented first.**

**GENERAL COUNSEL'S REPORT - White House Health Care, Inc. - (White House, Robertson County) - Project No. CN9409-062AEE**

The request for modification is for the construction of five (5) twelve (12)-bed facilities instead of a single 140 bed facility. The project cost would remain within the \$6.42 Million amount for the previously modified Certificate of Need. This request is contingent upon the approval of the two (2) twelve (12)-bed facilities that are the being heard simultaneously. The applicant will surrender the remaining fifty-six (56) beds originally approved for this site. This request also includes the extension of the expiration date from December 31, 2006 to December 31, 2007.

The original Certificate of Need was approved on December 14, 1994 for the construction and operation of a one hundred forty (140) bed intermediate and skilled care nursing facility featuring a twenty-four (24) bed Alzheimer's special care unit, a twenty-four (24) bed skilled nursing facility rehabilitation unit, and a ninety-two (92) bed unit dually certified for both Medicare and Medicaid. The original expiration date of February 1, 1997 was extended to December 12, 2004 due to dismissal of a contested case. On May 26, 2004 the HSDA granted an extension of the December 12, 2004 expiration date to December 12, 2005 and cost over-run from \$5,100,000 to \$6,420,000. On September 22, 2004 the Agency approved an additional extension of the expiration date from December 12, 2005 to December 31, 2006.

E. Graham Baker, Jr., Esq., representing the applicant, addressed the Agency and Dixie Taylor-Huff spoke on behalf of the project. John Arriola spoke in support of the project.

Dr. Handorf moved for approval of the request. Mr. Atchley seconded the motion. The motion CARRIED [8-0-0] by unanimous voice vote. **APPROVED**

AYE: Flowers, Lammert, Koella, Atchley, Handorf, Weaver, Collier, Caldwell  
NAY: None

**CERTIFICATE OF NEED APPLICATION - White House Skilled Housing - (White House, Robertson County) - Project No. CN0511-104**

The establishment of two (2) twelve (12)\* bed nursing homes to be located on approximately four (4) acres of a fifty-two (52) acre site currently under development. These nursing homes will provide skilled nursing services in the proposed service area of Robertson and Sumner counties. The total twenty-four (24) Medicaid-certified beds for the two (2) nursing homes will be surrendered from an approved but unimplemented certificate of need (CN9409-062A) for the establishment of a 140-bed nursing home. The remaining 116 beds are the subject of General Counsel's Report, Item A. These two 12-bed facilities will operate under the same license as CN9409-062A. Project Cost \$3,157,087.50. \*These beds are not subject to the 2005-2006 125-bed nursing home pool.

E. Graham Baker, Jr., Esq., representing the applicant, addressed the Agency and Dixie Taylor-Huff spoke on behalf of the project. John Arriola spoke in support of the project.

Mr. Atchley moved for approval of the project based on: 1) Need – The need has been established by the granting of the original Certificate of Need in 1994; 2) Economic Feasibility – The project is economically feasible based on the loan from HUD; and 3) The project does contribute to the orderly development of adequate and effective health care as this project does more than other projects and this is the way long term care should be in the future and we applaud the effort of this creative idea. Dr. Handorf seconded the motion. The motion CARRIED [8-0-0]. **APPROVED**

AYE: Flowers, Lammert, Koella, Atchley, Handorf, Weaver, Collier, Caldwell  
NAY: None

**GENERAL COUNSEL'S REPORT**

*Reid Brogden summarized the following request. Jim Christoffersen explained contested case procedures.*

*Dr. Handorf recused  
Commissioner Flowers left meeting*

**Cape Surgery Center - (Dyersburg, Dyer County) - Project No. CN0402-011A**

- (i) Riverside Surgery Center, LLCs request that the Agency revoke Certificate of Need CN0402-011A.
- (ii) Riverside Surgery Center, LLCs Petition for Declaratory Order.

William L. Penny, Esq. representing Riverside Surgery Center, LLC, presented argument in support of Riverside Surgery Center's request and its Petitions.

Richard Lodge, Esq., representing Cape Surgery Center, addressed the Agency in opposition to the request and the Petition. Present on behalf of the project were Dr. Richard Cape and Stephanie Cape.

Mr. Lammert moved that no action be taken on either item (i) or (ii). Mr. Atchley seconded the motion. The motion CARRIED [6-0-0]. By unanimous voice vote. No Action Taken.

AYE: Lammert, Koella, Atchley, Weaver, Collier, Caldwell  
NAY: None

**OTHER BUSINESS**

Audit Charges – Staff will continue to work with Finance & Administration and await direction from the Agency members.

Meeting Dates – The December meeting will be December 20, 2006.

**CURRENT REPORTS**

**Statistical Reports**

The reports were accepted into the record.

**Finance, Ways and Means Committee Reports**

The reports were accepted into the record.

**Minutes**

The minutes of the March 22, 2006, meeting was accepted by unanimous voice vote.

**ADJOURNMENT**

There being no further business, the meeting adjourned.

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Melanie M. Hill, Executive Director

MMH/mab